

Fredrikson

& BYRON, P.A.

FAX

DATE: July 25, 2006
TO: USPTO
COMPANY:
FAX: 1-571-273-8300
DIRECT DIAL:

RECEIVED
CENTRAL FAX CENTER

JUL 25 2006

FROM: Kara Fairbairn
DIRECT DIAL: (612) 492-7144
FAX: (612) 492-7077
TOTAL NUMBER OF PAGES (including this page): 5

COMMENTS:

Attorneys & Advisors
main 612.492.7000
fax 612.492.7077
www.fredlaw.com

Fredrikson & Byron, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, Minnesota
55402-1425

MEMBER OF THE WORLD SERVICES GROUP
A Division of Federal Professional Service Providers

OFFICES
Minneapolis, London, & Monterrey, Mexico

CONFIDENTIALITY NOTICE

The document(s) accompanying this fax contain confidential information which is legally privileged. The information is intended only for the use of the intended recipient. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of the telecopied information except its direct delivery to the intended recipient named above is strictly prohibited. If you have received this fax in error, please notify us immediately by telephone to arrange for return of the original document to us.

IF YOU DO NOT RECEIVE ALL PAGES OR ARE EXPERIENCING OTHER PROBLEMS IN TRANSMISSION, PLEASE CALL 612.492.7835. THANK YOU.

FAX CENTER USE

EMPL: 1187
C/M: 45422/0017
EQ. NO. ENTERED:
NAME: J. Schultz
EXT. 7777 / 33
VERIFIED: jas

PTO/SB/21 (09-04)

Approved for use through 07/31/2006. OMB 0651-0031

U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**TRANSMITTAL
FORM**

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

4

Application Number 10/772,833

Filing Date February 5, 2004

First Named Inventor Mitchell Friedman

Art Unit 3735

Examiner Name Robert L. Nasser

Attorney Docket Number 45422.17.1

RECEIVED
CENTRAL FAX CENTER

JUL 25 2006

ENCLOSURES (Check all that apply)

<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to TC
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Amendment/Reply	<input type="checkbox"/> Petition	<input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Power of Attorney, Revocation	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Change of Correspondence Address	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Terminal Disclaimer	Response to Restriction Requirement
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> Request for Refund	
<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> CD, Number of CD(s) _____	
<input type="checkbox"/> Reply to Missing Parts/Incomplete Application	<input type="checkbox"/> Landscape Table on CD	
<input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	Remarks	

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Fredrikson & Byron, P.A.		
Signature	<i>Kara K. Fairbairn</i>		
Printed name	Kara K. Fairbairn		
Date	July 25, 2006	Reg No.	49,079

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:			
Signature	<i>Jill Schultz</i>		
Typed or printed name	Jill Schultz	Date	07/25/2006

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form in the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**RECEIVED
CENTRAL FAX CENTER****JUL 25 2006**

In Re Application of:

Mitchell Friedman et al.

Application No.: 10/772,833

Filed: February 5, 2004

For: AUTOMATED BREATH
COLLECTION DEVICETo: Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

) Examiner: Robert L. Nasser

) Group Art Unit: 3735

) Attorney Docket: 45422.17.1

) I hereby certify that this correspondence is being:

☐ deposited with the United States Postal
Service as first-class mail in an envelope
addressed to: Commissioner for Patents, P.O.
Box 1450, Alexandria, VA 22313-1450.☒ facsimile transmitted to the Patent and
Trademark Office☐ hand delivered to the Patent and Trademark
Office) on this 25th day of July, 2006) By Jill Schultz
Jill Schultz**RESPONSE TO RESTRICTION REQUIREMENT**

This response responds to the restriction requirement mailed June 27, 2006. The Examiner has required restriction to one of the following inventions under 35 U.S.C. § 121:

I. Claims 1-28, stated by the Examiner as being drawn to an automated breath collection device, classified in class 600, subclass 543; or

II. Claims 29-32, stated by the Examiner as being drawn to a cartridge, classified in class 206, subclass 527.

In response to the restriction requirement, Applicants, through their attorney, provisionally elect the invention of Group I (claims 1-28) with traverse.

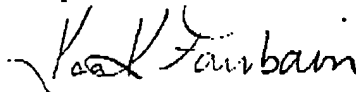
The claims of Groups I-II meet the requirements for consideration in a single application, inter alia, in that they each relate to an automated breath collection device. Further, Applicants traverse the restriction requirement on the grounds that no serious burden on the Examiner exists. If the search and examination of an entire application can be made without serious burden, it must be examined on the merits even though it includes claims directed to distinct or independent invention. M.P.E.P. § 803. The subject matter of Groups I-II are believed sufficiently related that a thorough search for the subject matter of either group would encompass a search for the subject matter of both groups. To avoid duplicative examination by the Patent Office and unnecessary delay and expense to Applicants, Applicants respectfully request examination on the merits of all the claims, not just those of Group I.

Furthermore, Applicants submit that if a determination of an allowable generic claim is issued, claims that are written in dependant form or otherwise include all the limitations of the allowed generic claim should be considered. M.P.E.P. § 809.02(c). Therefore, Applicants respectfully request that the Examiner consider rejoining the claims of Group I and the claims of Groups II upon a finding of allowability of the claims of Group I.

The Commissioner is hereby authorized to charge any additional filing fees required to Deposit Account No. 061910.

The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,



Kara Fairbairn
Registration No. 49,079

Customer No. 22859
Fredrikson & Byron, P.A.
4000 Pillsbury Center
200 South Sixth Street
Minneapolis, MN 55402-1425 USA
Telephone: (612) 492-7000
Facsimile: (612) 492-7077

Please grant any extension of time necessary for entry; charge any fee due to Deposit Account No. 06-1910.

4053097_1.DOC